

**ILLINOIS COMMERCE COMMISSION**  
**Springfield, Illinois**

**RECEIVED**  
**AUG 26 2002**

Illinois Commerce Commission  
RAIL SAFETY SECTION

Village of Elwood, Will County, Illinois )

Petitioner )

v. )

Docket No. T02-0038

CenterPoint Intermodal LLC, )

Burlington Northern and Santa Fe  
Railway Company, and )

State of Illinois, Department of Transportation )

Respondents )

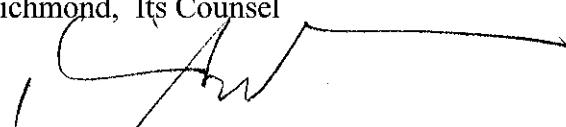
Notice of Service

TO: Service List. Attached hereto please find a copy of the Sole Rail Provider Agreement admitted into evidence as Exhibit 7 in the above captioned proceeding.

Respectfully submitted,

CenterPoint Intermodal LLC

By: Katz Randall Weinberg &  
Richmond, Its Counsel

By:   
Kevin P. Breslin

Kevin P. Breslin  
Katz Randall Weinberg & Richmond  
333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
Facsimile: 312-807-3903  
E-mail address: [kbreslin@krw.com](mailto:kbreslin@krw.com)

**DOCKETED**

7/1/02

Service List

Ms. Donna Caton  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

Mr. Michael Sazdanoff  
Kenneth J. Wysoglad & Associates  
Suite 700  
118 South Clinton Street  
Chicago, Illinois 60661

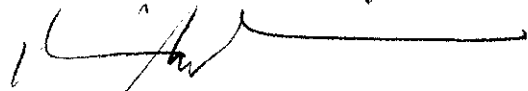
Mr. Henry C. Humphries  
Railroad Safety Specialist  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

Mr. Edward P. Graham  
Law Office of Edward P. Graham  
1112 South Washington Street  
Suite 212  
Naperville, Illinois 60540

Mr. James Easterly  
Director  
Division of Highways  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, Illinois 62764

Proof of Service

The undersigned hereby certifies that the foregoing instrument was served upon the parties listed in the above Service List, by depositing same in the U.S. mail postage prepaid addressed as above set forth, on August 22, 2002.

A handwritten signature in black ink, appearing to read 'Kevin P. Breslin', written over a horizontal line.

Kevin P. Breslin, an attorney

**COPY**

THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:

Barry A. Comin  
Katz Randall Weinberg & Richmond  
333 West Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
(312) 807-3800

KRWR File No. 07056.36225

**MARY ANN STUKEL**

**11P**

Will County Recorder

Will County

**R 2002105586**

**Page 1 of 11**

**LMR Date 06/27/2002 Time 11:31:57**

**Recording Fees: 25.00**

This space reserved for Recorder.

**SOLE RAIL SERVICE PROVIDER AGREEMENT**

THIS SOLE RAIL SERVICE PROVIDER AGREEMENT ("Agreement") is entered into as of June 19, 2002, by and between CENTERPOINT INTERMODAL LLC, an Illinois limited liability company ("CP Intermodal"), and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF").

**RECITALS:**

A. CP Intermodal has agreed to execute and deliver a recordable agreement to BNSF pertaining to rail service to be provided within (i) that certain property currently owned by CP Intermodal, and (ii) such additional property as may be hereafter acquired by CP Intermodal from time to time (said property is hereinafter collectively referred to as the "Park" and is legally described on Exhibit A attached hereto and by this reference incorporated herein); and

B. BNSF and CP Intermodal will derive financial benefit from the execution of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Recitals.** The foregoing recitals are incorporated herein as though fully set forth in this Section 1.

2. **Sole Rail Service Provider.** Subject to the terms of Section 4 of this Agreement, BNSF shall be the sole provider of rail service within the Park; *provided that*, BNSF shall be required to and hereby agrees to provide reciprocal switching and rail service within the Park at then current market rates, and at reasonable levels of service, to other line haul railroads which have physical access to the interchange point with BNSF's system at Joliet, Illinois or another interchange point reasonably acceptable to BNSF and such other railroad, *provided further* that BNSF shall not be obligated to provide such reciprocal switching to the portion of the Park containing approximately 83 acres of land, as depicted on Exhibit B attached hereto and by this reference

BCOMIN/498650.6

incorporated herein as the "Coal Storage and Handling Parcel" ("**Indeck Parcel**") so long as (i) Indeck ("**Indeck**") and BNSF have agreed in writing to waive the obligation of BNSF to provide reciprocal switching to Indeck, and (ii) the Indeck Parcel is used or operated as a coal storage and handling facility.

3. **Interference.** CP Intermodal covenants and agrees that neither CP Intermodal nor any affiliate of CP Intermodal shall take or cause to be taken or permit to be taken any action that will result in a breach of the covenant described in Section 2 of this Agreement; *provided, however*, that BNSF acknowledges and agrees that CP Intermodal shall not be deemed to have breached the foregoing covenant by allowing tenants within the Park to use another line haul carrier to bring goods to the aforementioned interchange point for delivery to such tenants.

4. **Termination of BNSF Rights.** The right of BNSF to serve as the sole provider of rail service within the Park shall not terminate except as follows: (i) thirty (30) days after written notice from CP Intermodal to BNSF of the occurrence of an Event of Default (as defined in the hereinafter defined Improvements Lease) under the Improvements Lease Agreement (BNSF 2002-A) dated as of June 19, 2002 between BNSF Trust 2002-A and BNSF (the "**Improvements Lease**") unless, within said thirty (30)-day period, such Event of Default has been cured, the Improvements Lease remains in full force and effect and BNSF provides to CP Intermodal a written certification to such effect, (ii) in the event that BNSF or any of its Affiliates (as defined in the Improvements Lease) is neither the owner nor lessee of the Improvements (as defined in the Improvements Lease), or (iii) in the event that BNSF fails or ceases to provide reciprocal switching or rail service within the Park at then current market rates and reasonable levels of service and such failure or cessation continues for a period of fifteen (15) days after written notice of such failure or cessation from CP Intermodal to BNSF.

5. **Evidence of Termination.** In the event of the termination of BNSF's rights to serve as the sole provider of rail service within the Park, BNSF shall, upon the written request of CP Intermodal, execute a document in recordable form acknowledging the termination of the rights of BNSF under this Agreement; *provided, however*, the rights of BNSF shall terminate as provided in Section 5 whether or not BNSF executes such a document.

6. **Covenants Run With the Land.** All rights, privileges, covenants, conditions and restrictions contained herein shall be deemed to be covenants running with the land.

7. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. BNSF shall not transfer, assign or otherwise convey this Agreement or any of its obligations hereunder without the prior written consent of CP Intermodal. Notwithstanding the preceding sentence, any transfer, assignment or conveyance of the obligations of BNSF hereunder resulting, directly, or indirectly, as the result of consolidating with or merging into any other Person (as defined under the Improvements Lease) or the conveyance, transfer or lease of substantially all of its assets as an entirety to any Person shall be permitted without the prior written consent of CP Intermodal so long as (i) the Person formed by such consolidation or into which such party is merged or the Person which acquires by conveyance, transfer or lease of substantially all of the assets of BNSF as an entirety, shall execute and deliver to CP Intermodal an agreement containing the assumption by the successor entity of the due and punctual performance and observance of each covenant and condition of this Agreement to be performed or observed by BNSF under this Agreement, and (ii) the senior unsecured debt rating with S&P (as defined under the Improvements Lease) of the successor entity shall be in excess of the greater of the senior unsecured debt rating with S&P of BNSF immediately prior to such transaction or as of the date hereof.

8. **Counterparts.** This Agreement may be executed by the parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

9. **Applicable Law.** This Agreement shall in all respects be governed by, and construed in accordance with, the law of the State of Illinois (excluding the laws applicable to conflicts or choice of law), including all matters of construction, validity and performance.

10. **Notices.** All notices, consents, directions, approvals, instructions, requests, and other communications required or permitted by the terms hereof shall be in writing and be made either by personal delivery by recognized overnight courier, by facsimile transmission confirmed by telephone or by first class registered mail, postage pre-paid, to the following addresses and facsimile numbers:

If to CP Intermodal:     CenterPoint Properties Trust  
                                     1808 Swift Drive  
                                     Oak Brook, Illinois 60523  
                                     Attention: President


If to BNSF:                 The Burlington Northern and Santa Fe Railway  
                                     Company  
                                     2500 Lou Menk Drive  
                                     Fort Worth, Texas 76131-2828  
                                     Attention: Treasurer

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due authority, has caused this Agreement to be duly executed in its name by its officers, thereunto duly authorized, all as of the date first above written.

**CENTERPOINT INTERMODAL, LLC,**  
an Illinois limited liability company

By: **CENTERPOINT PROPERTIES TRUST, a**  
Maryland real estate investment trust, its sole  
member and manager

By:   
Name: Michael M. Mullen  
Title: President and Chief Operating Officer

By:   
Name: Michael Tortorici  
Title: Assistant Secretary

**[SIGNATURES CONTINUED ON FOLLOWING PAGE]**

**THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY, a Delaware corporation**

By: 

Name: James J. O'Neil

Title: Assistant Vice President

Property and Facility Management

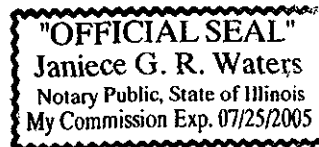


STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, Janiece G. R. Waters, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael M. Mullen as President and Chief Operating Officer, and Michael Tortorici, as Assistant Secretary of CenterPoint Properties Trust, a Maryland real estate investment trust, being the sole member and manager of CenterPoint Intermodal LLC, respectively, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said CenterPoint Properties Trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of June, 2002.

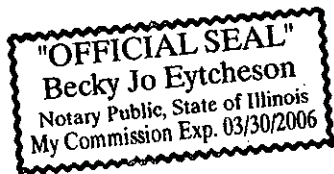
Janiece G. R. Waters  
Notary Public



STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, Becky Jo Eytcheson, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that James J. O'Neil, as Assistant Vice President-Property and Facility Management of The Burlington Northern and Santa Fe Railway Company, respectively, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said The Burlington Northern and Santa Fe Railway Company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of June, 2002.



Becky Jo Eytcheson  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PARK**

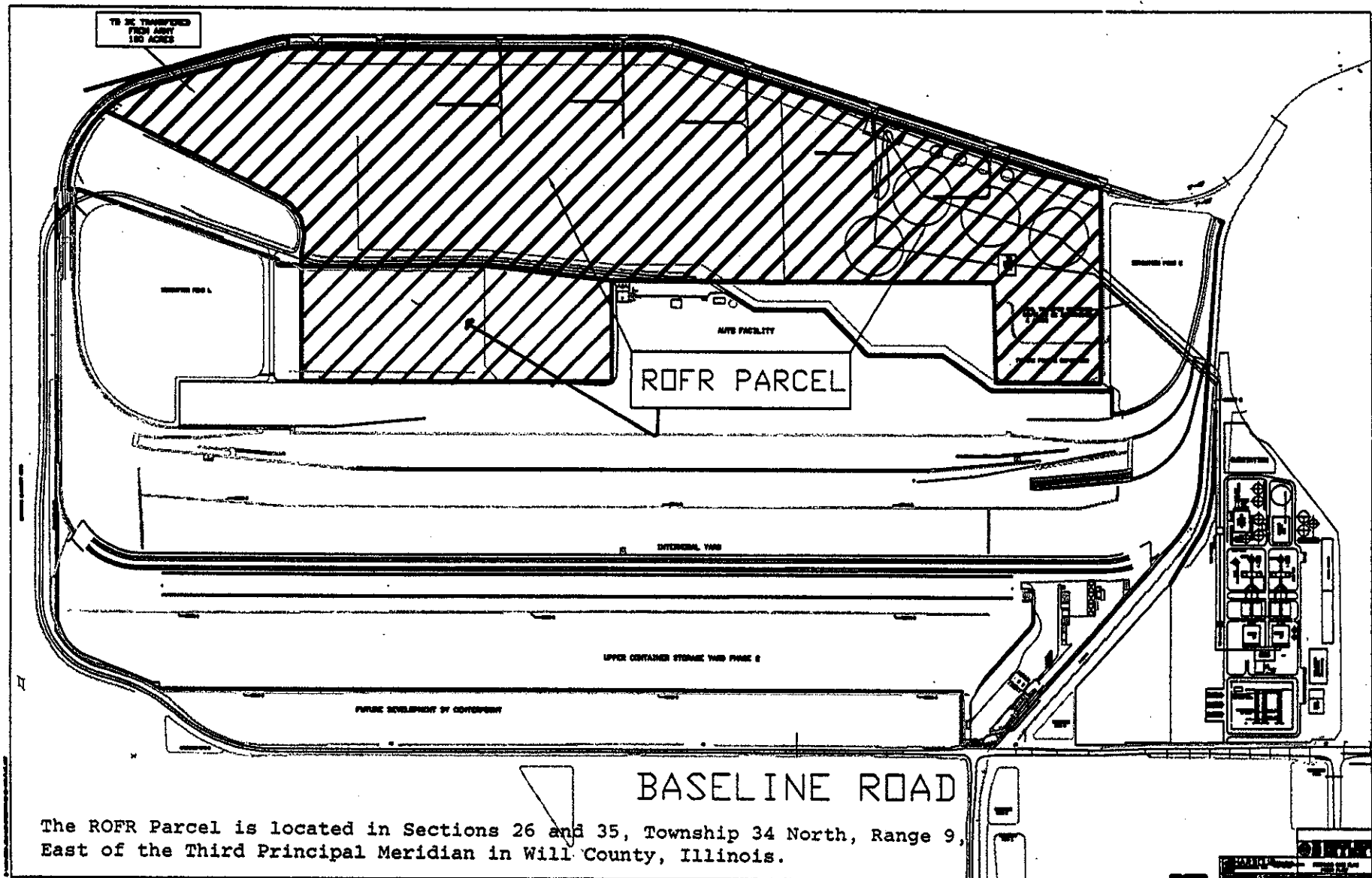
Blocks 2, 3 and 4 in CenterPoint Intermodal Center at Deer Run, a subdivision of part of Sections 29 and 30 in Township 34 North, Range 10 East and part of Sections 23, 25, 26, 35 and 36 in Township 34 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded on June 7, 2002 as document number R2002094161 in Will County, Illinois.

Address:       CenterPoint Intermodal Center at Deer Run  
                  Vicinity of Baseline and East Access Roads  
                  Elwood, Illinois

PINs:           11-30-400-007  
                  11-30-100-005  
                  10-25-200-002  
                  10-35-400-003  
                  10-26-400-001  
                  10-23-300-002  
                  11-30-300-006

**PLUS, the additional property which may hereafter be acquired by CP Intermodal as depicted on the page next following.**

# CENTERPOINT INTERMODAL CENTER AT DEER RUN PARCEL EXHIBIT A (cont'd)



**EXHIBIT B**

**INDECK PARCEL**

# CENTERPOINT INTERMODAL CENTER AT DEER RUN PARCEL EXHIBIT B

